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91-560

No. ____

Supreme Court, U.S.
FILED
JUL 8 1991
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

SEPTEMBER TERM, 1991

THE MARYLAND CHAPTER OF THE
AMERICAN MASSAGE THERAPY ASSOCIATION, INC.,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

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QUESTION PRESENTED

Is abstention proper where the State's regulation of speech, in violation of the First Amendment, will not be resolved by state adjudication?

PARTIES

The Maryland Chapter of the American Massage Therapy Association, Incorporated, a corporate body of the State of Delaware,

Petitioner,

versus

State of Maryland; ADELE WILZACK, Secretary, Department of Health and Mental Hygiene for the State of Maryland; CHARLES M. DILLA, Chairman, Physical Therapy Examiners for the State of Maryland; MARILYN G. BOOHER, Board of Physical Therapy Examiners for the State of Maryland; CAROL A. HAMILTON, Board of Physical Therapy Examiners of the State of Maryland; WILLIAM D. HODGES, Board of Physical Therapy Examiners for the State of Maryland; JUDITH A. SCHANK, Board of Physical Therapy Examiners for the State of Maryland,

Respondent

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Petitioner,

v.

STATE OF MARYLAND,
Respondent.

Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

PETITIONER, THE MARYLAND CHAPTER OF THE AMERICAN MASSAGE THERAPY ASSOCIATION, INC., RESPECTFULLY REQUESTS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT AND OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

OPINIONS BELOW

The Unreported Opinion of the United States Court of Appeals for the Fourth Circuit, *Md. Chapter of American Mass. v. State of Maryland*, No. 90-2417, upholding abstention, is reproduced in Appendix A.

The Order of the United States Court of Appeals for the Fourth

Circuit denying the petitioner for rehearing and suggestion for rehearing en banc., No. 90-2417, is reproduced in Appendix B.

STATEMENT OF JURISDICTION

The Order of the United States Court of Appeals for the Fourth Circuit affirming the District Court's decision to abstain was decided on March 18, 1991. The Order of the United States Court of Appeals for the Fourth Circuit denying the petition for rehearing and suggestion of rehearing en banc was filed on April 9, 1991. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1) and Rules of this Court, Rule 17.1(a) and (c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment of The United States Constitution

The Health Occupations Article of the Annotated Code of Maryland, Section 13 (1986 Repl. Vol.) (The pertinent part is reproduced in Appendix C.)

STATEMENT OF THE CASE

The State of Maryland has enacted "The Maryland Physical Therapy Practice Act.", primarily designed to maintain standards in the health profession of physical therapy. (Appendix C) The pertinent part of this act states as follows:

2. "Practice physical therapy" includes:

(iii) Except as provided in paragraph (3) of this subsection, administering treatment with therapeutic exercise, therapeutic massage, mechanical devices, or therapeutic

agents that use the physical, chemical, or other properties of air, water, electricity, sound, or radiant energy.

The Petitioner is an Association of individuals residing with in the State of Maryland, who earn their livelihood, in whole, or in part, by means of rendering massage services as "massage therapy", or "therapeutic massage". The use of the terms, particularly "therapy" and "therapeutic", is generic, and in no way implies medical treatment of any nature whatsoever; the modern and accepted definition of the term "therapy" being not limited specifically to the treatment or cure of disease.

The pertinent language of the statute set forth above has been construed by the State of Maryland to prohibit not only the advertisement, or commercial or other publication, of rendering massage therapy or therapeutic massage, by the Petitioner, but has been further construed by the State to prohibit the rendering of "therapeutic massage" or "massage therapy" by an individual not a licensed physical therapist, within the State of Maryland. Therefore, the State of Maryland has prohibited the Petitioner from advertising or engaging in massage therapy or therapeutic massage. The Petitioner faces criminal prosecution if it continues in its normal and customary practices as massage therapists.

The State has denied the Petitioner its livelihood and its ability and right to advertise its livelihood. Furthermore, the State is unreasonably restraining trade and competition in the field of massage therapy in the State of Maryland, denying the citizens of the State of Maryland access to massage therapy services other than those physical therapy services offered by licensed Physical Therapists.

The Petitioner, because of the State's actions, instituted suit in the United States District Court for the District of Maryland claiming violations of the 1st, 5th, and 14th Amendments to the United States Constitution and Sections 1 and 2 of the Sherman Act asking for Declaratory and Injunctive relief. Upon oral argument, the District Court ordered abstention. The jurisdiction of the federal court was

based on the diversity of the parties and the appropriate amount of money over $50,000, for in the complaint. On appeal to the United States Court of Appeals, whose jurisdiction was based on a timely appeal, affirmed the District Court's decision to abstain from the case. (Appedix A).

ARGUMENT

I. ABSTENTION WILL NOT RESOLVE THE ISSUE OF THE VIOLATION OF THE PETITIONER'S FIRST AMENDMENT RIGHTS.

In a majority of Federal Courts, abstention is being used as an avenue in which to relieve the Courts of some of the vast amount of cases it has to handle. The issue of abstention in the Federal Courts is confusing and contradicting. In *Colorado River Water Conservation Dist. v. United States*,[1] this Court stated that "[A]bstention from the exercise of federal jurisdiction is the exception, not the rule." "[A]bstention must be invoked only in 'special circumstances' and only upon careful consideration of the facts of each case," because the abstention process delays expeditious adjudication in federal court and the Petitioner's valuable federal rights might be lost.[2] However, because of the enormous case load in the federal courts, abstention is being granted in almost any case involving a controversy with a State statute, even when it is not appropriate.

The confusion in the federal courts starts with the *Pullman* abstention doctrine, "the judge-made doctrine abstention, first fashioned in 1941 in *Railroad Commission v. Pullman Co.*, 312 U.S. 496."[3] The *Pullman* doctrine states that in order for abstention, the following must be present:

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[1] 424 U.S. 800, 813 (1976).

[2] *Harris County Commissioners Court v. Moore*, 420 U.S. 77, 83 (1975).

[3] *Zwickler v. Koota*, 389 U.S. 241, 248 (1967).

"(1) an unclear issue of state law presented for decision, (2) the resolution of which may moot or present in a different posture the federal constitutional issue such that the state law issue is potentially dispositive."[4]

The courts have not established a single, precise formulation of how uncertain a state law must be to require abstention. The courts which require a minimum degree of uncertainty will abstain when state law is "susceptible"[5] to avoiding construction or it is "conceivable"[6] the state court decision might eliminate the need to consider the constitutional issue. A greater degree if uncertainty is implied when the Court uses the test where the state statute must be "fairly subject" to avoiding adjudication by the federal court in order to abstain.[7] The federal case law has not determined the test to be used in abstention cases.

Applying the first part of the *Pullman* doctrine to the present case, abstention is not warranted because the state law is not unclear. The Petitioner has been prohibited by the statute from using the words "therapeutic massage" and "massage therapy" in its advertising for its services. There is nothing unclear about this statute, instead it is overbroad. In an effort to control commercial speech, specific words have been made unlawful to use, and this is a clear violation of the Petitioner's First Amendment rights.

After prolonged delay for the Petitioners, if the State of Maryland rules that the statute does not apply to the Petitioner, the Petitioner may be free to extend its services to the public. However, the Petitioner will still be prohibited from advertising its services under

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[4] *Educational Servs. v. Maryland State Bd. for Higher Educ.*, 710 F.2d 170 (4th Cir. 1983); *accord Meridith v. Talbot County*, 828 F.2d 228, 231 (4th Cir. 1987).

[5] *Babbitt v. United Farm Workers National Union* 442 U.S. 289 (1979).

[6] *Fornais v. Ridge Tool Co.*, 400 U.S. 167 (1970).

[7] *Wisconsin v. Constantineau*, 400 U.S. 433 (1971).

the statue. If the State of Maryland decides that the Statute applies to the petitioner, it will be prohibited from using the essential words to advertise its services. In the present case, the state statute is not "fairly subject" to avoiding federal interpretation. Therefore, State adjudication will not relieve the Petitioner's burden, or render the constitutional issue moot.

In addition, the second part of the *Pullman* doctrine is also not applicable. State adjudication will not resolve the violation of the Petitioner's First Amendment rights because it will still be precluded from advertising its services, no matter what interpretation the state may give the prohibited words. The State statute must be struck down, not interpreted, in order for the Petitioner to have its rights vindicated. The Petitioner presented its case before the federal court and asked for the State Statute to be declared unconstitutional. Instead, the federal court abstained in order for the State of Maryland to decide if the statute applies to the Petitioner. State adjudication will resolve the issue of whether the Petitioner will be allowed to practice its livelihood, however, it will not resolve the issue of the State's violation of the Petitioner's right to advertise its livelihood. Therefore, since the question, uncomplicated by ambiguous language, is whether the statute on its face is constitutional, abstention from federal jurisdiction is not required.[8]

Abstention is not appropriate solely because the rights asserted may be adjudicated in some other forum.[9] If this were the case, the federal courts would abstain on every issue involving a state statute. Deference should be given to the Petitioner's choice of a federal forum for the hearing and decision of its federal constitutional claims.[10]

This Court has observed the necessity for federal adjudication

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[8] *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 237 (1984).

[9] *Zwickler*, 389 U.S. at 248.

[10] *Zwickler*, at 248.

where a statute is attacked on its face for its repungnancy to the First amendment. "In such a case to force the Plaintiff to suffer the delay of state court proceedings might itself effect the impermissible chilling of the very constitutional right he seeks to protect."[11] In *Zwickler*, this Court declared that:

> For a request for a declaratory judgment that a state statute is overbroad on its face must be considered independently of any request for injunctive relief against the enforcement of that statute. We hold that a federal district court has the duty to decide the appropriateness and the merits of the declaratory request irrespective of its conclusion as to the propriety of the issuance of the injunction.[12]

The present case closely parallels *Zwickler*, in that the Petitioner has asked for an injunction and a declaratory judgment where a state statute is violating its First Amendment rights. The federal court should not have abstained but instead should have undertaken its duty to decide the merits of the declaratory request despite its conclusion not to issue an injunction. Therefore, the Petitioner should not be forced to endure the delay of state court proceedings and be denied its right to practice and advertise its livelihood for an interminable period of time.

Furthermore, there is no possible interpretation that "the state courts would be likely to construe the statute in a fashion that would avoid the need for a federal constitutional ruling."[13] The evil being challenged was the State of Maryland's regulation of advertising, not which of the possible interpretations was the correct one. The question remains whether state regulation of such advertising is constitutionally permissible. In this case "abstention would amount

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[11] *Id.* at 252.

[12] *Id.* at 254.

[13] *Harris County Commissioners*, 420 U.S. at 83.

to shrinking the solemn responsibility of the federal courts to guard, enforce, and protect every right granted or secured by the Constitution of the United States."[14]

CONCLUSION

Abstention is not proper where the state's regulation of speech, in violation of the first amendment, will not be resolved by state adjudication. The present abstention doctrine in the federal courts is based in part on the enormous amount of cases that the courts are required to handle and has resulted in individuals being forced to endure the delay of state court proceedings before their constitutional rights are vindicated. A clear decision is needed from this Court to uphold the principles of abstention in the federal courts.

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[14] *Kusper v. Pontikes*, 414 U.S. 51, 55 (1973).

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 90-2417

THE MARYLAND CHAPTER OF THE AMERICAN MASSAGE THERAPY ASSOCIATION, INCORPORATED, a corporate body of the State of Delaware,

Plaintiff - Appellant,

versus

STATE OF MARYLAND; ADELE WILZACK, Secretary, Department of Health and Mental Hygiene for the State of Maryland; CHARLES M. DILLA, Chairman, Physical Therapy Examiners for the State of Maryland; MARILYN G. BOOHER, Board of Physical Therapy Examiners for the State of Maryland; CAROL A. HAMILTON, Board of Physical Therapy Examiners for the State of Maryland; WILLIAM D. HODGES, Board of Physical Therapy Examiners for the State of Maryland; JUDITH A. SCHANK, Board of Physical Therapy Examiners for the State of Maryland,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Walker E. Black, Jr., District Judge. (CA-89-3367-B)

Argued: February 8, 1991 Decided: March 18, 1991

Before HALL and CHAPMAN, Circuit Judges, and MULLEN, United States District Judge for the Western District of North Carolina, sitting by designation.

Affirmed by unpublished per curiam opinion.

ARGUED: Jeffrey Neil Pritzker, MARGOLIS, PRITZKER & EPSTEIN, P.A., Towson, Maryland, for Appellant. Carl Forrest Ameringer, Assistant Attorney General, Baltimore, Maryland, for Appellees. **ON BRIEF**: Joseph Curran, Jr., Attorney General of Maryland, Harry Attorney General, Ellen S. Cooper, Assistant Attorney General, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

The Maryland Chapter of the American Massage Therapy Association, Inc., ("the Chapter"), appeals the decision of the District Court of Maryland staying this action, which challenges the constitutionality of a Maryland statute regulating physical therapy, pending the resolution of proceedings in the Maryland state court. The district court found that the statute presented an unsettled question of state law, which a Maryland state court could interpret so as to obviate the constitutional claims presented, and that it should abstain under the doctrine of *Pullman* abstention. *(Railroad Commission v. Pullman*, 312 U.S. 496 (1941)). We affirm.

I.

The Chapter, a non-profit association, has a membership of approximately 250 individuals engaged in the practice of "massage therapy." The members of the Chapter, practitioners, who are not licensed by Maryland as therapists, contend that they do not give "medical treatment," but simply provide "massage services" for relaxation and recreation purposes.

The Chapter brought this lawsuit to challenge the constitutionality of a Maryland statute known as "The Maryland Physical Therapy Act." The Act provides that individuals cannot practice, attempt to practice, or offer to practice "physical therapy" without a license. Md. Code Ann. *Health & Occupations* § 13-301(a) (1991 repl. vol.). The Act further provides that anyone practicing "physical therapy" without a license can be fined up to $1,000. *Id.* at § 13-407. Maryland's State Board of Physical Therapy Examiners has interpreted the statute to proscribe the advertisement of massage and the administering of any "massage therapy" by any individual not licensed as a physical therapist.

Following this interpretation, the Chapter sued the Board and

the state of Maryland in federal district court, alleging that the statute, as interpreted, violated the first, fifth, and fourteenth amendments to the United States constitution. The Chapter also asserted that the statute illegally restrained trade in violation of the Sherman Act. The state of Maryland filed a motion to dismiss on the basis of, among other issues, the *Pullman* doctrine of abstention. The district court determined that abstention was appropriate and stayed the case, but retained jurisdiction pending further order of the court.

II.

We apply a mixed standard of review when considering whether a district court should have abstained in a pending case. We review the threshold legal issue of whether the statute presents unsettled issues of state law, the construction of which might make the federal constitutional issues moot, under a *de novo* standard. If the legal prerequisites for the application of the present, we apply an abuse of discretion standard to determine whether the special circumstances existed to justify abstention. *See United Service Auto. Ass'n. v. Muir*, 792 F.2d 356, 361 (3d Cir. 1986), *cert. denied*, 479 U.S. 1031 (1987).

III.

The sole issue in this case is whether the district court should have abstained under the doctrine of *Pullman* abstention. We first consider whether the legal prerequisites exist. Since 1941, the Supreme Court has recognized that federal courts should abstain from deciding constitutional claims when an interpretation of an unclear state statutory provision by a state court might eliminate the constitutional issues presented. *Railroad Commission v. Pullman*, 312 U.S. 496 (1941); *accord City of Houston v. Hill*, 482 U.S. 451, 468 (1987); *Harman v. Forssenius*, 380 U.S. 528, 534 (1965).

However, "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule." *Colorado River Water Conservation Dist.*

v. United States, 424 U.S. 800, 813 (1976). The Supreme Court has warned that "because of the delays inherent in the abstention process and the danger that valuable federal rights might be lost in the absence of expeditious adjudication in federal court, abstention must be invoked only in 'special circumstances' and only upon careful consideration of the facts of each case." *Harris County Commissioners Court v. Moore*, 420 U.S. 77, 83 (1975) (citations omitted).

Guided by these principles, we have previously held that for a district court to abstain under *Pullman*, the case must involve "(1) an unclear issue of state law presented for decision, (2) the resolution of which may moot or present in a different posture the federal constitutional issue such that the state law issue is potentially dispositive." *Educational Servs. v. Maryland State Bd. for Higher Educ.*, 710 F.2d 170 (4th Cir. 1983); *accord Meridith v. Talbot County*, 828 F.2d 228, 231 (4th Cir. 1987). We find both of these elements present in this case.

First the Act contains an unclear term, "therapeutic massage." The Chapter argues that "therapeutic massage" is a generic term describing services offered by members of the Chapter and does not connote the providing of any treatment or healing services. The state of Maryland, however, contends that "therapeutic massage" means the "practice of physical therapy" and relates to treatment or healing.

We addressed a similar factual scenario in *Public Citizen, Health Research Group v. Commission in Medical Discipline of Maryland*, 573 F.2d 863 (4th Cir. 1978), and find the reasoning of that case controlling in this instance. In *Public Citizen*, the state of Maryland had regulations restricting certain types of physician advertising. The plaintiff, who published physician directories, challenged the constitutionality of the law in federal court. The district court abstained, finding that if the state court determined the directories did not constitute "advertising" under the regulation, the constitutional issues would become moot. *Id.* at 865. We held this abstention by the federal court was proper to allow the state court to interpret the meaning of the statute.

Just as the statute in *Public Citizen* failed to adequately define advertising, the statute in the present case fails to adequately define "therapeutic massage." This definitional ambiguity, however, can be resolved in state court so as to avoid the constitutional issues presented to the district court. If a state court accepts the Chapter's view of "therapeutic massage" as not involving treatment or healing services, the statute would not apply to the members of the Chapter, because the practitioners would be offering a common massage and not "practicing physical therapy without a license." As a result, the Chapter would no longer have reason to challenge the statute.

On the other hand, if the state court accepted the state's view of "therapeutic massage" as a type of treatment or healing service, the Chapter members would be practicing physical therapy without a license" in violation of the statute. In that event, the Chapter could return to federal court to raise the constitutional challenges. *See England v. Louisiana State Bd. of Med. Examiners*, 375 U.S. 411 (1964) (party may undertake course of state litigation after federal court abstained without affecting right to pursue future claims in federal court). Since this case represents an unclear issue of state law, the resolution of which could moot the constitutional issues, we hold that this case meets the two legal requirements of *Pullman* abstention.

IV.

We now address whether the district court abused its discretion in abstaining in this case, and we find no abuse. Even though this case involves constitutional claims, which may be prejudiced by the delay resulting from abstention, there are counterbalancing concerns, *i.e.*, the important state interests of avoiding deception and of maintaining high standards in the health care profession. This case has been pending in federal court for only a short period. Therefore, the Chapter will not be significantly prejudiced by having to litigate its claims in state court. It was clearly within the district court's discretion to abstain in this case.

V.

For the foregoing reasons, the district court's decision to abstain in this case is

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
April 9, 1991

No. 90-2417

THE MARYLAND CHAPTER OF THE AMERICAN MASSAGE THERAPY ASSOCIATION, INCORPORATED, a corporate body of the State of Delaware

Plaintiff - Appellant

versus

STATE OF MARYLAND; ADELE WILZACK, Secretary, Department of Health and Mental Hygiene for the State of Maryland; CHARLES M. DILLA, Chairman , Board of Physical Therapy Examiners for the State of Maryland; MARILYN G. BOOHER, Board of Physical Therapy Examiners for the State of Maryland; CAROL A. HAMILTON, Board of Physical Therapy Examiners for the State of Maryland; WILLIAM D. HODGES, Board of Physical Therapy for the State of Maryland; JUDITH A. SCHANK, Board of Physical Therapy Examiners for the State of Maryland

Defendants - Appellees

On Petition for Rehearing with Suggestion for Rehearing En Banc

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The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Chapman with the concurrence of Judge Hall and Judge Mullen.

For the Court,

CLERK

APPENDIX C

Subtitle 1. Definitions; General Provisions.

§ 13-101. Definitions.

(a) *In general.* — In this title the following words have the meanings indicated.

(b) *Board.* — "Board" means the State Board of Physical Therapy Examiners.

(c) *License.* — "License" means, unless the context requires otherwise, a license issued by the Board to practice:

(i) Physical therapy; or

(ii) Limited physical therapy.

(d) *Licensed physical therapist.* — "Licensed physical therapist" means, unless the context requires otherwise, a physical therapist who is licensed physical therapy.

(e) *Licensed physical therapist assistant.* — "Licensed physical therapist assistant" means, unless the context requires otherwise, a physical therapist assistant who is licensed by the Board to practice limited physical therapy.

(f) *Physical therapist.* — "Physical therapist means an individual who practices physical therapy.

(g) *Physical therapy assistant.* — "Physical therapy assistant" means an individual who practices limited physical therapy.

(h) *Practice limited physical therapy.* — (1) "Practice limited physical therapy" means to practice for compensation the health specialty concerned with:

(i) The prevention of disability in individuals; and

(ii) The physical rehabilitation of individuals with a congenital or acquired disability.

(2) "Practice limited physical therapy" includes, except as provided in paragraph (3) of this subsection, administering treatment with therapeutic exercise, therapeutic massage, mechanical devices, or therapeutic agents that use the physical, chemical, or other properties of air, water, electricity, sound, or radiant energy.

(3) "Practice limited physical therapy" does not include:

(i) Performing and interpreting tests and measurements of neuromuscular and musculoskeletal functions to aid treatment;

(ii) Planning treatment programs that are based on test findings; or

(iii)Using:

1. X-rays;
2. Radioactive substances; or
3. Electricity for cauterization or surgery.

(i) *Practice physical therapy.* — (1) "Practice physical therapy" means to practice for compensation the health specialty concerned with:

(i) The prevention of disability in individuals; and

(ii) The physical rehabilitation of individuals with a congenital or acquired disability.

(2) "Practice physical therapy" includes:

(i) Performing and interpreting tests and measurements of muscular and musculoskeletal functions to aid treatment;

(ii) Planning treatment programs that are based on test findings; and

(iii)Except as provided in paragraph (3) of this subsection, administering treatment with therapeutic exercise, therapeutic massage, mechanical devices, or therapeutic agents that use the physical, chemical, or other properties of air, water, electricity, sound, or radiant energy.

(3) "Practice physical therapy" does not include using:

(i) X-rays;

(ii) Radioactive substances; or

(iii)Electricity for cauterization or surgery.

(j) *Restricted license.* — "Restricted license" means a license issued by the Board under and as limited by § 13-314 of this practice physical therapy.

(k) *Temporary license.* — "Temporary license" means a license issued by the Board under and as limited by § 13-313 of this title to practice:

(1) Physical therapy; or

(2) Limited physical therapy. (An. Code 1957, art. 43, §§ 604,

605; 1981, ch. 8, § 2.)

§ 13-102. Scope of title.

Except as specifically provided in this title, this title does not limit the right of:

(1) An individual to practice a health occupation that the individual is authorized to practice under this article;

(2) A chiropractor to practice physical therapy if the individual is authorized to practice physical therapy under Title 3 of this article;

(3) An individual to provide nonmedical services while:

(i) Practicing cosmetology; or

(ii) Operating a health club; or

(4) A health club to advertise as a health club. (An. Code 1957, art. 43, ; 1981, ch. 8, § 2.)

Subtitle 3. Licensing.

§ 13-301. License required; exceptions.

(a) *In general.* — Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice physical therapy or limited physical therapy in this State.

(b) *Exceptions.* — This section does not apply to:

(1) A student who is supervised directly by a licensed physical therapist in a Board approved physical therapy educational program; or

(2) A physical therapy aide, if the physical therapy aide:

(i) Subject to the rules and regulations adopted by the Board, performs only procedures that do not require the professional skills of licensed physical therapist or a licensed physical therapist assistant; and

(ii) Performs procedures only under the direct supervision of a licensed physical therapist who personally is present in the area where the procedures are performed. (An. Code 1957, art. 43, §§

610, 614; 1981, ch. 8, § 2; ch. 124.)

Subtitle 4. Prohibited Acts; Penalty.

§ 13-401. Practicing without license.

(a) *Practicing physical therapy.* — Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice physical therapy in this State unless licensed to practice physical therapy by the Board.

(b) *Practicing limited physical therapy.* — Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice limited physical therapy in this State unless licensed to practice limited physical therapy by the Board. (An. Code 19587, art. § 613; 1981, ch. 8, § 2.)

§ 13-402. Misrepresentation — Physical therapist.

(a) *In general.* — Unless licensed to practice physical therapy under this title, a person may not represent to the public by title that the person is licensed to practice physical therapy in this State.

(b) *Certain representations prohibited.* — Unless licensed to practice physical therapy under this title, a person may not use the abbreviation "P.T." or any other word, letter, or symbol approved by the Board with the intent to represent that the person practices physical therapy. (An. Code 1957, art. 43, §§ 612,613; 1981, ch. 8, § 2.)

§ 13-403. Same — Physical therapist assistant.

(a) *In general.* — Unless licensed to practice limited physical therapy under this title, a person may not represent to the public by title that the person is licensed to practice limited physical therapy in this State.

(b) *Certain representations prohibited.* — Unless licensed to practice limited physical therapy under this title, a person may not use the abbreviation "P.T.A." or any other word, letter, or symbol approved by the Board with the intent to represent that the person practices limited physical therapy. (An. Code 1957, art. 43, §§ 612, 613; 1981, ch. 8 § 2.)

§ 13-404. Supervision required.

Unless under the direction of a licensed physical therapist, a physical therapist assistant may not practice limited physical therapy. (An. Code 1957, art. 43, § 605; 1981, ch. 8 § 2.)

§§ 13-405, 13-406.

Reserved.

§ 13-407. Penalty.

A person who violates any provision of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000. (An. Code 1957, art. 43, § 613; 1981, ch. 8 § 2.)

§ 13-408. Reports by courts to Board.

(a) *Required reports.* — Each court shall report to the Board each conviction of or entry of a plea of guilty or nolo contendere by a physical therapist or physical therapist assistant for any felony or crime involving moral turpitude.

(b) *Time for making report.* — The court shall submit the report within 10 days of the conviction or entry of the plea. (1982, ch. 351.)

Subtitle 5. Short Title; Termination of Title.

§ 13-501. Short title.

This title may be cited as the "Maryland Physical Therapy Act". (1981, ch. 8, § 2.)

§ 13-502. Termination of title.

Subject to the evaluation and reestablishment provisions of the Program Evaluation Act, this title and all rules and regulations adopted under this title shall terminate and be of no effect after July 1, 1992. (An. Code 1957, art. 43, § 614A; 1981, ch. 8, § 2; ch. 170; 1982, ch. 519, § 3.)

Cross reference. — As to the Maryland Program Evaluation Act, see Subtitle 4 of Title 8 of the State Government Article.

91-56

Supreme Court, U.S.
FILED
JUL 22 1991
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No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

THE MARYLAND CHAPTER OF THE
AMERICAN MASSAGE THERAPY ASSOCIATION, INC.,

Petitioner,

v.

STATE OF MARYLAND, ET AL.

Respondent.

Supplemental Appendix for the Petition For A Writ Of Certiorari To The United States Court of Appeals For The Fourth Circuit

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IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF MARYLAND

THE MARYLAND CHAPTER OF THE AMERICAN MASSAGE THERAPY ASSOCIATION, INC., etc.	CIVIL NO. B-89-3367
v.	
STATE OF MARYLAND, et al.	

ORDER

Presently pending in the above-captioned case is defendant's Motion to Dismiss Complaint for Declaratory and Injunctive Relief or, in the Alternative, for Summary Judgment (Paper 3). The issues raised by the motion have been briefed, and the Court has had the benefit of oral argument at a hearing held today.

In accordance with the Court's oral opinion and rulings rendered in open court at the conclusion of the hearing, IT IS, this 8th day of June, 1990, by the United States District Court for the District of Maryland,

ORDERED:

(1) The defendant's Motion to Dismiss Complaint for Declaratory and Injunctive Relief or, in the Alternative, for Summary Judgment (Paper 3), BE, and the same herby IS, GRANTED in part as follows:

(a) that the Court shall abstain from deciding this case under the doctrine of *Railroad Commission of Texas v. Pullman Company*, 312 U.S. 496 (1941);

(2) That proceedings in this case BE, and the same hereby ARE, STAYED pending further Order of the Court; and

(3) The Clerk shall mail a copy of this Order forthwith to counsel of record.

Walter E. Black, Jr.
United States District Judge